

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Mwati P. McKenzie,

Civ. File. No.00-2350 (PAM)

Petitioner,

v.

**MEMORANDUM AND ORDER**

James Bruton, Warden of Oak  
Park Heights Correctional Facility,

Respondent.

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This matter is before the Court on Petitioner Mwati McKenzie's Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b). For the reasons that follow, the Motion is denied.

**BACKGROUND**

On October 23, 1993, Petitioner was convicted in Hennepin County District Court on two counts of first degree murder. After unsuccessful appeals and post-conviction challenges in state court, Petitioner filed a federal habeas corpus petition under 28 U.S.C. § 2254 on October 20, 2000. On March 1, 2001, this Court dismissed the petition as time barred under 28 U.S.C. § 2244(d). (See Clerk Doc. No. 14.) On July 29, 2005, Petitioner filed the instant Motion, seeking relief under Federal Rule of Civil Procedure 60(b).

**DISCUSSION**

Petitioner argues that the Court should vacate the original judgment of dismissal in this action because of newly discovered evidence. Rule 60 provides that the Court may relieve a party from a final judgment because of "newly discovered evidence which by due diligence

could not have been discovered in time to move for a new trial under Rule 59(b).” However, such a motion “shall be made within a reasonable time” and “not more than one year after the judgment, order, or proceeding was entered or taken.” Fed. R. Civ. P. 60(b). Final judgment in this action was entered on March 1, 2001. (See Clerk Doc. No. 15.) Petitioner did not seek relief under Rule 60(b) until July 29, 2005. (See Clerk Doc. No. 16.) Accordingly, his Motion is untimely and is therefore denied.

### CONCLUSION

Based on all the files, records, and proceedings herein, the Court finds that Defendant’s arguments lack merit. Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner’s Motion for Relief from Judgment (Clerk Doc. No. 16) is **DENIED**;  
and
2. Petitioner’s Motion for Evidentiary Hearing (Clerk Doc. No. 19) is **DENIED**  
**as moot.**

Dated: November 4, 2005

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge